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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

~~No. 167~~ 71-167

ST. PAUL AT CHASE CORPORATION,
A MARYLAND CORPORATION,
Petitioner,

v.

MANUFACTURERS LIFE INSURANCE COMPANY OF TORONTO, A CANADIAN CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT IN OPPOSITION

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JURISDICTION

Petitioner has erroneously sought review by this Court pursuant to 28 U.S.C. § 1254. Section 1254 confers on this Court only the power to review decisions of the United States courts of appeals. Respondent's argument will assume, but not encourage, that this Court will consider the Petition to have been an attempt to invoke jurisdiction under 28 U.S.C. § 1257(3).

STATUTE INVOLVED

United States Code, Title 28:

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

* * * * * *

(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

STATEMENT

Manufacturers Life Insurance Company (Manufacturers), on June 7, 1963, issued a commitment for permanent mortgage financing of a high-rise apartment building to be constructed in Baltimore, Maryland, by St. Paul at Chase Corporation (St. Paul). On March 7, 1966, the expiry date of that commitment, Manufacturers, having been advised that the conditions of its commitment contract had not been fulfilled by St. Paul, elected to exercise its option to cancel the contract.

Thereafter, St. Paul brought suit against Manufacturers alleging, among other things, breach of contract. The Maryland Court of Appeals ultimately ruled[1] that Manufacturers

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[1] The case was first filed in the Superior Court for Baltimore City and thereafter removed to the Circuit Court for Baltimore County where it was tried non-jury before Judge Kenneth C. Proctor. The trial took approximately five weeks of which the first four were concerned with the question of liability and the balance with the problem of damages. During the trial the parties introduced a total of 153 exhibits; the total trial transcript consists of 3,269 pages. Judge Proctor filed findings of fact and conclusions of law consisting of 151 pages and subsequently an opinion and judgment nisi of 42 pages. Petitioner appealed to the Court of Appeals of Maryland; Respondent cross-appealed. Six briefs were filed with the Court of Appeals, and

breached its contract, thus affirming the trial court's conclusion that St. Paul's substantial completion of the building met the conditions of the commitment contract. The trial court had awarded St. Paul over $1.5 million in damages against Manufacturers. The Maryland Court of Appeals concluded that St. Paul sustained additional consequential damages from Manufacturers' breach, resulting in a total award of approximately $2.25 million of which $2,015,035.14 was awarded against Manufacturers.

St. Paul, not satisfied with the Maryland Court of Appeals' interpretation of the Maryland law of damages consequent to breach of contract, has petitioned this Court, apparently in the belief that this Court will construe Maryland law in a manner which will enlarge St. Paul's award.

ARGUMENT

I.

THERE IS NO FEDERAL QUESTION PRESENT IN THE RECORD OF THIS CASE.

The thrust of Petitioner's argument is that the Maryland Court of Appeals applied an improper standard for computing damages which flowed from the breach of a contract made and to be performed in Maryland. That the measure of damages consequent to breach of contract is purely a matter of state and not Federal law has been made manifestly clear by this Court.[2] There is "no question but that the substantive law of [the state] should determine the

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the time for the argument before that Court was more than twice that assigned in the usual case. These facts are cited to demonstrate that this case has been thoroughly and adequately presented to the Maryland courts.

[2] Indeed, were it not so clear that no Federal question arises from the Maryland Court of Appeals' ruling on damages, Respondent Manufacturers would have petitioned this Court for review of an award which places Petitioner in a far *better* financial position than Petitioner would have been in had Respondent fully performed.

requirements of the cause of action, the interpretation of the contract and the measure of damages to be applied." *Transcontinental & Western Air, Inc. v. Koppal*, 345 U.S. 653, 656-57 (1953). *See Black v. Cutter Laboratories*, 351 U.S. 292, 299-300 (1956).

Petitioner incorrectly assumes that it has a right under the Federal Constitution to have the rule of *Hadley v. Baxendale*, 9 Exch. 341 (1854), applied in the manner it contends is proper to measure its damages. Justice McReynolds, speaking for this Court in *American Railway Express Co. v. Kentucky*, 273 U.S. 269 (1927), said at 272: "[W]e must accept as controlling the decision of the state courts upon questions of local law, both statutory and common." Even if the Maryland Court of Appeals' application of *Hadley v. Baxendale* were against the weight of authority, Petitioner would have no Constitutional complaint. "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law." 273 U.S. at 273.

Nor has Petitioner raised a Federal question by asserting that its rights under the Maryland Constitution have been infringed. Interpretation of a state constitution is solely a matter of state law. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 680 (1930).

II.

PETITIONER'S ATTEMPT TO RAISE A FEDERAL QUESTION WAS NOT TIMELY.

Assuming *arguendo* that Petitioner has raised a Federal question, it has not been "specially set up or claimed" [28 U.S.C. § 1257(3)] in timely fashion. Petitioner's suit against Respondent was initiated in 1966. Only after five

years of protracted litigation, after the Maryland Court of Appeals affirmed the trial court's award in Petitioner's favor, did Petitioner make fleeting reference to the Fourteenth Amendment in its Motion for Modification of Decision and for Rehearing (see p. 65a of Appendix to Petition). And in its subsequent Supplemental Motion for Modification of Decision and for Rehearing, Petitioner made no reference to the Constitution (see pp. 67a-80a of Appendix to Petition). Both motions were denied by the Maryland Court of Appeals without discussion.

> [I]t is elementary that a mere assertion in a state court of a right under the Constitution of the United States in a petition for rehearing affords no ground for invoking the jurisdiction of this court unless the court below, in dealing with the petition for rehearing, considers and passes upon the Federal ground therein relied upon. . . .

Bowe v. Scott, 233 U.S. 658, 663 (1914). *See Hanson v. Denckla*, 357 U.S. 235, 243-44 (1958); *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 128 (1945).

III.

MEASURING DAMAGES BY FAIR MARKET VALUE AT TIME OF BREACH IS NOT A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW.

Petitioner claims that it was deprived of property without due process of law because it was awarded damages based only on the actual fair market value of the building at time of breach. Petitioner urges this Court to hold that its Constitutional measure of damages should be based on a speculative value placed on the building three years prior to its construction.

Petitioner's attack on the "fair market value" standard of measuring damages is unfounded, for this Court has on

numerous occasions approved the use of that formula in a Constitutional context. *See, e.g., United States v. Virginia Electric & Power Co.*, 365 U.S. 624 (1961); *United States* ex rel. *Tennessee Valley Authority v. Powelson*, 319 U.S. 266 (1943); *United States v. Miller*, 317 U.S. 369 (1943).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

RICHARD W. CASE,
Counsel for Respondent.